

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 382 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHALAJI KUTARIA RATHWA

Versus

STATE OF GUJARAT

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Appearance:

Mr. P.M.Vyas, Advocate for the appellant.

Mr. M.A.Bukhari, A.P.P. for the respondent.

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 06/08/96

ORAL JUDGEMENT :(Per : Panchal,J.):--

This appeal under section 374 of the Code of Criminal Procedure,1973 is directed against the judgment and order dated April 21,1988, rendered by the learned

Additional Sessions Judge, Vadodara, in Sessions Case no.61/87 by which the appellant is convicted under section 302 of the Indian Penal Code and sentenced to R.I. for life as well as fine of Rs.500/- i/d. S.I. for six months.

2. The prosecution case in brief is that Ramanbhai Veljibhai Rathwa was residing at Mohan Falia, village Gangoda, Taluka : Chhotaudepur with his family members and parents. He was doing agricultural work. His father had four brothers. The ancestral properties were partitioned between his father and brothers of his father. All were cultivating their respective lands. The incident in question took place on June 15, 1987. Deceased Veljibhai scolded the appellant, as the appellant had damaged edge of his field. Thereupon altercation took place. The appellant got enraged, dragged Veljibhai near his house and after bringing axe from his house, caused axe injuries on neck of the deceased. Ramanbhai, who is son of deceased Veljibhai as well as his mother intervened in the incident, but it is the case of the prosecution that the appellant caused injury to Ramanbhai and thereafter ran away with the axe. Ramanbhai thereafter contacted Ranchhodbhai Chhotabhai, who was then Police Patel of village Gangoda. He informed the police patel that his father was killed by the appellant. On receiving this information from Ramanbhai, the police patel went to the place of incident and found dead body of Veljibhai lying there. He thereafter accompanied Ramanbhai to Police Station situated at Chhotaudepur. At the Police Station, Ramanbhai lodged First Information Report, which was entered into the register kept at the Police Station and numbered as C.R.No. I.75/87 under sections 302 & 323 of the Indian Penal Code. Mr. Somabhai Sodha, who was then discharging duties as Police Sub Inspector, Chhotaudepur Police Station, investigated the case. He held inquest on the dead body and sent it for autopsy. He also prepared panchnama of scene of offence in presence of panch witnesses and recorded statements of witnesses. Meanwhile, the appellant surrendered at the Police Station. The arrest panchnama of the appellant was prepared in presence of independent witnesses and the appellant was arrested. While preparing arrest panchnama it was noticed that banian and dhoti worn by the appellant were blood stained; whereas the axe which was with the appellant was besmeared with blood. Therefore, banian and dhoti of the appellant as well as axe which was with him, were seized and sent to Forensic Science Laboratory for the purpose of analysis. The

investigating officer also got prepared map of scene of offence. At the conclusion of investigation, the appellant was chargesheeted in the Court of learned Magistrate under sections 302 & 323 of Indian Penal Code. As the offence under section 302 is exclusively triable by Court of Sessions, the case was committed to Sessions Court for trial, which was numbered as Sessions Case no. 61/87.

3. The learned Additional Sessions Judge, Vadodara Camp at Chhotaudepur framed charge at exh.2 against the appellant under sections 302 & 323 of I.P.C. The charge was read over and explained to the appellant. The appellant did not plead guilty to the charge and claimed to be tried. The prosecution, therefore, examined following witnesses to prove its case against the appellant :-

- (1) Naliniben Jashraj Ahiya, PW.1, Exh.6
- (2) Ramanbhai Veljibhai Rathwa, PW.2, Exh.12
- (3) Gujaliben, widow of Veljibhai, PW.3, Exh.14
- (4) Ranchhodbhai Chhotabhai, PW.4, Exh.15
- (5) Ramabhai Dhanabhai, PW.5, Exh.16.
- (6) Somabhai Sodha, PW.6, Exh.19.

The prosecution also relied on documentary evidence such as postmortem notes Exh.7, inquest panchnama exh.8, map of scene of offence exh.9, panchnama of seizure of clothes of the deceased exh.10, report of forensic science laboratory exh.11, complaint lodged by Ramanbhai exh.13, panchnama of place of offence exh.17, panchnama of person of accused exh.18 etc. to prove its case against the appellant.

4. After recording of the evidence of prosecution witnesses was over, the learned Judge questioned the appellant generally on the case and recorded his statement under section 313 of the Code of Criminal Procedure, 1973. In his statement under section 313 of the Code, the appellant stated that the case against him was false. However, the appellant did not lead any evidence in his defence.

5. After appreciating the evidence led by the prosecution, the learned Judge recorded following conclusions :-

- (1) The evidence of complainant Ramanbhai Veljibhai as well as evidence of Gujaliben read with the evidence of Dr. Naliniben Ahia and the

postmortem notes prepared by her indicate that the deceased Veljibhai died a homicidal death.

- (2) The incident in question had taken place near the house of the appellant.
- (3) The evidence of complainant Ramanbhai who is son of deceased Veljibhai, inspires confidence of Court and his evidence proves beyond reasonable doubt that the appellant had caused fatal injuries to deceased by means of an axe which resulted into his death.
- (4) The sworn testimony of Gujaliben, who is widow of deceased Veljibhai, is also truthful and her evidence also establishes that the appellant had caused death of deceased Veljibhai by inflicting blows with an axe.
- (5) The evidence of police patel Ranchhodbhai Chhotabhai shows that immediately after the incident he was contacted by complainant Ramanbhai and the complainant had informed him that his father was killed by the appellant.
- (6) Eye witness account given by the witnesses is corroborated by medical evidence.
- (7) Banian and dhoti worn by the appellant as well as the axe which was with the appellant had blood having 'AB' group which was also blood group of the deceased and no explanation is offered by the appellant regarding circumstantial evidence appearing against him.
- (8) As the prosecution evidence has proved it beyond reasonable doubt that the appellant caused fatal injuries to the deceased with an intention to kill him, the appellant is guilty under section 302 of I.P.C.
- (9) Though the complainant claimed before the Court that he was caused injury by the appellant, that fact was not stated by him in his complaint nor the medical officer is examined to prove injury certificate indicating that he had received injuries and, therefore, offence under section 323 of I.P.C. is not proved by the prosecution.

In view of the above referred to conclusions, the learned Additional Sessions Judge, Vadodara acquitted the appellant under section 323 of I.P.C. but convicted him under section 302 of I.P.C. and imposed sentence which is referred to earlier, giving rise to the present appeal.

6. Mr. P.M.Vyas, learned Counsel for the appellant has taken us through the entire evidence on record. After referring to the evidence of complainant Ramanbhai,

it was pleaded that the complainant had not mentioned in the complaint that quarrel had taken place between his father and the appellant because the appellant had damaged edge of the field and, therefore, his evidence should be discarded as unreliable. It was claimed that the fact that the deceased was dragged by the appellant was not mentioned by the complainant in his complaint and the complainant having made material improvement in his sworn testimony before the Court, his evidence should be disbelieved by the Court. It was argued that complainant Ramanbhai has stated in his evidence that only one blow was given on the head of his deceased father; whereas Gujaliben, widow of the deceased has stated that 3 blows with axe were given on the head of the deceased and this contradiction in the evidence of eye witnesses shows that they had not witnessed the incident and, therefore, the appeal should be accepted. It was asserted on behalf of the appellant that the fact that the complainant had run away to save his life, is not mentioned in his complaint and having regard to the conduct of the appellant, his evidence should be rejected as untrustworthy. Mr. Vyas, learned Counsel for the appellant pleaded that neither complainant Ramanabhai nor widow of the deceased had witnessed the incident, but the appellant was implicated because Gujaliben failed in her attempt to usurp land of the appellant and, therefore, the appeal should be allowed. It was also emphasised on behalf of the appellant that the appellant was implicated in the case after due deliberations with the Police Patel of village Gangoda and as witness Ramabhai Dhanabhai has not supported the prosecution regarding seizure of blood stained banian, dhoti and axe, benefit of doubt should be given to the appellant and the appeal should be allowed.

7. Mr. M.A.Bukhari, learned A.P.P. contended that both the eye witnesses have given deposition in most natural manner and, therefore, the learned Judge has rightly believed their sworn testimony. It was submitted on behalf of the respondent that complainant Ramanbhai being son of the deceased and witness Gujaliben being widow of the deceased, would not allow the real culprit to go scot free and involve the appellant falsely in the case. After referring to the map of scene of offence it was argued on behalf of the respondent that it clearly indicates that complainant Ramanbhai as well as Gujaliben were in a position to witness the incident and as the incident had taken place in day light, there was no question of any mistaken identity. What was emphasised by the learned Counsel for the respondent was that evidence of eye witnesses is fully corroborated by

medical evidence and, therefore, the appeal should not be accepted. It was stressed on behalf of the State that seizure of banian and dhoti worn by the appellant as well as the axe which was with the appellant, is amply proved by the evidence of investigating officer and, therefore, finding recorded by the learned Judge on the point of seizure of muddamal articles should not be interfered with by the Court. On behalf of the prosecution, it was asserted that report of Forensic Science Laboratory indicates in no uncertain terms that banian and dhoti worn by the appellant as well as the axe which was with the appellant at the time when he surrendered to the police, had blood stains of 'AB' group which was also the blood group of the deceased and the appellant having failed to offer any plausible explanation, his involvement in the crime was established by the prosecution beyond reasonable doubt. After referring to the evidence led by the prosecution, it was urged that case against the appellant is proved by the prosecution beyond reasonable doubt and, therefore, the appeal should be dismissed.

8. The evidence of Ramanbhai Veljibhai Rathwa indicates that the deceased was his father and the appellant is his uncle. He has stated that a quarrel had taken place between his father and the appellant regarding damage to the edge of the field belonging to his father. He has deposed before the Court that thereupon his father was dragged by the appellant and brought near his house where the appellant had given axe blow on the head of his father. He has claimed that at the time when the incident took place, he and his mother were present. He has also asserted that when he tried to intervene, he was injured by the appellant and, therefore, he had run away. In his sworn testimony he has stated that thereafter he had contacted Sarpanch and had lodged the complaint at Chhotaudipur Police Station. He has also deposed that he had shown the place of incident to the investigating officer. In cross-examination, the witness has stated that his father was in the habit of consuming liquor and he had consumed little liquor on the day of incident also. He has also stated that his father had quarreled with one Jaliya also. He has claimed that the quarrel between his father and the appellant had lasted for half an hour, but nobody had gathered near his house. He has admitted that he did not state in his complaint that the appellant had damaged edge of their field. He also admitted that the fact that his father was dragged by the appellant was not mentioned by him in his complaint. He also stated that he had not mentioned in his complaint that the appellant had caused

injuries to him on back and hand. He has denied the suggestion made on behalf of the defence that he had not witnessed the incident.

9. In our view, the evidence of Ramanbhai is rightly relied on by the learned Judge. His evidence gets ample corroboration from the evidence of Gujaliben, who is widow of the deceased. His evidence also gets support from the evidence of Ranchhodbhai Chhotabhai, who was then Police Patel of village Gangodiya. The evidence of Ramanbhai also gets corroboration from the medical evidence on record. The omissions which have been brought on record, are not material at all nor do they detract the credibility of the witness.

10. The submission that complainant Ramanbhai had falsely involved the appellant under section 323 of I.P.C. and, therefore, his evidence deserves to be rejected, is devoid of merits. It is relevant to note that after lodging of complaint, Ramanbhai was referred to Medical Officer, Referral Hospital, Chhotaudepur and injury certificate dated June 26, 1987 was also obtained. The certificate issued by the doctor was also sought to be tendered in evidence on behalf of the prosecution along with a list. However, the learned Public Prosecutor incharge of the case, for the reasons best known to him, did not examine the medical officer who had issued the certificate. Under the circumstances, the learned Judge has disbelieved the case of the prosecution against the appellant so far as offence under section 323 of I.P.C. is concerned. However, merely because injury certificate is not proved as required by law, would not indicate that any attempt has been made by the complainant to falsely implicate the appellant with reference to the murder of his father. No major contradictions or omissions have been brought on record so as to destroy credibility of the witness. On the facts and in the circumstances of the case, we are of the opinion that the learned Additional Sessions Judge did not commit any error in placing reliance on the sworn testimony of complainant Ramanbhai.

11. Gujaliben, who is widow of deceased Veljibhai, has also stated in her evidence that a quarrel had taken place between her deceased husband and the appellant about damage to edge of field. She has deposed before the Court that the appellant had dragged the deceased and brought him near his house. She has testified before the Court that the appellant had thereafter given blows with axe on the head of the deceased and she had witnessed the incident. She has also referred to the injury caused to

her son Ramanbhai by the appellant. In her cross-examination the witness has stated that the edge of the field was damaged by Natuda, who is son of Daljibhai, one of the brothers of the deceased. She has also admitted that she had not tried to intervene in the incident. She has stated that she in the company of her son had gone to the house of police patel and thereafter decided to file the complaint. She has denied the suggestion made on behalf of the defence that she was deposing falsely because she wanted to usurp land of the appellant. As pointed out earlier Gujaliben being widow of the deceased, would not allow the real culprit to go scot free and involve the appellant falsely in such a serious case. No major contradictions or omissions have been brought on record with reference to her police statement. A bare reading of her evidence indicates that she has testified before the Court in most natural manner. It is not suggested to her that because of any enmity she has falsely deposed against the appellant. On overall view of the matter, we are of the opinion that the learned Judge has rightly relied on the evidence of Gujaliben.

12. The evidence of Ranchhodbhai Chhotabhai indicates that at the relevant time he was Police Patel of village Gangodiya. On the date of incident, Ramanbhai who is original complainant, had seen him at his house and informed him that his father was killed by the appellant. This witness has stated before the Court that thereafter he had gone to the place of incident and had seen the dead body lying there. The witness has also deposed that he had accompanied Ramanbhai to Chhotadepur Police Station. The assertion made by this witness that the complainant Ramanbhai had seen him and informed him that the appellant had killed his father, is not challenged in the cross-examination at all. The evidence of this witness also corroborates the say of original complainant Ramanbhai.

Similarly, the evidence of Ramabhai Dhanabhai PW.5, Exh.16 shows that panchnama of place of offence was prepared in his presence. Though this witness has admitted signature on the panchnama pertaining to person of the appellant, he has stated that no clothes of the appellant were seized in his presence. After obtaining necessary permission from the Court, witness was declared hostile and cross-examined by the prosecution. The fact that blood stained banian and dhoti as well as blood smeared axe which was with the appellant were seized, is amply proved by the evidence of Somabhai Sodha, who investigated the case. Reading Exh.18, it is evident



that banian and dhoti worn by the appellant which were blood stained as well as axe which was besmeared with blood and which was with the appellant, were seized. The evidence of investigating officer together with Exh.11 shows that the seized articles were sent to Forensic Science Laboratory for analysis. The report of the Analyst indicates that banian and dhoti worn by the appellant as well as the axe which was with him, had blood of 'AB' group, which was also blood group of the deceased. It is relevant to note that the appellant has not offered any explanation as to how blood of the deceased was found on his clothes as well as axe which was produced by him before the police when he surrendered. Reading the prosecution evidence as a whole, it becomes apparent that the appellant had inflicted axe blow on the deceased, as a result of which the deceased died on the spot.

13. Dr.Naliniben Jashraj Ahia the then Medical Officer of Referral Hospital, Chhotaudapur has stated in her sworn testimony that she had conducted autopsy on the dead body of deceased Veljibhai and had noted following external injuries :-

I.W.3"x1/2"x bone deep left parietal region 3" above pinna of left ear.

C.L.W. 1"x1/2"x bone deep 1" behind pinna of left ear.

C.L.W. 3"x1 1/2"x bone deep. bone fractured over occipital region left side.

She had also noticed internal injury which was as under :-

Haematoma in left parietal region.

Comminuted fracture of occipital bone.

Brain fracture of left parietal bone.

Crush injury to brain substance in left temporal region and intracerebral haemorrhage both sides.

After referring to the injuries which were found on the dead body, medical officer has testified that injuries were possible by the axe which was produced by the prosecution before the Court as muddamal article no.1. The medical officer has in no uncertain terms mentioned before the Court that internal injuries nos.2 & 3 were corresponding with external injuries nos.2 & 3. The medical officer has also deposed that injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. Reading the evidence of medical officer, it becomes evident that sworn testimony of eye witnesses is also fully corroborated by

medical evidence.

14. It is relevant to note that both the eye witnesses are illiterate Adivasis. Some minor contradictions are bound to be there in their evidence. However, that is no ground to throw case over-board, as it is found to be true in the main. The comment made by the learned Counsel for the appellant that independent witnesses have not been examined by the prosecution and, therefore, prosecution case should be doubted, cannot be accepted. Indifferent attitude of the public in the investigation of crime has been pointed out by the Supreme Court time and again. Public are generally reluctant to come forward to depose before Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. The prosecution has examined necessary witnesses to unfold its case. The prosecution has proved beyond shadow of doubt that the appellant with intention to kill deceased Veljibhai inflicted axe blows and caused his death. As the prosecution evidence is not found to be discrepant, the learned Judge did not commit any error in convicting the appellant under section 302 of the Indian Penal Code. We do not find any substance in the appeal and, therefore, the same is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal is directed to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

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